

## **9 FAM 42.2 NOTES**

*(TL:VISA-284; 05-17-2001)*

### **9 FAM 42.2 N1 WAIVER OF PASSPORT REQUIREMENT**

*(TL:VISA-284; 05-17-2001)*

*The passport requirement of INA 222(b) shall be waived for the following categories of immigrants:*

- (1) The spouse, unmarried son or daughters or parent of a U.S. citizen or lawfully admitted permanent resident [see 9 FAM 42.2 N2 below];*
- (2) Returning lawfully admitted permanent resident [see 9 FAM 42.2 N3 below];*
- (3) Stateless person and accompany spouse and unmarried son or daughter [see 9 FAM 42.2 N4 below];*
- (4) National of Communist-controlled countries [see 9 FAM 42.2 N5 below];*
- (5) Alien member of the U.S. armed forces [see 9 FAM 42.1 N3]; and*
- (6) Beneficiary of Individual Waivers [see 9 FAM 42.2 N7].*

### **9 FAM 42.2 N2 WAIVER FOR RELATIVES OF A U.S. CITIZEN OR LPR**

*(TL:VISA-284; 05-17-2001)*

*The spouse, unmarried son or daughter or parent of a U.S. citizen or an LPR is not required to present a passport, unless the alien is applying in a country of which he or she is a national and which requires a passport for departure. .*

## **9 FAM 42.2 N2.1 Interpreting Terms “Son” and “Daughter”**

### **9 FAM 42.2 N2.1-1 Orphan Adopted Abroad and Orphan Adopted in United States**

*(TL:VISA-3; 08-30-1987)*

For children classified as “immediate relatives” by reason of INA 101(b)(1)(F), a distinction is made for the purposes of 22 CFR 42.2(a) between an orphan adopted abroad and an orphan to be adopted in the United States. If the orphan has been adopted abroad, the parent-child relationship legally exists when the visa application is made and the orphan will, therefore, be entitled to benefit from 22 CFR 42.2(a) and need not present a passport. If, however, the orphan is to be adopted in the United States after admission, such a relationship does not yet exist and the orphan will be required to present a passport.

### **9 FAM 42.2 N1-2 Defining “Son” and “Daughter”**

*(TL:VISA-3; 08-30-1987)*

See section 9 FAM 40.1 N.3 for other interpretations of the terms “son” and “daughter.”

### **9 FAM 42.2 N1-3 Defining “Orphan”**

*(TL:VISA-49; 10-30-1991)*

See section 9 FAM 42.21 N13.1 for definition of “orphan”.

## **9 FAM 42.2 N3 WAIVER FOR LAWFULLY ADMITTED PERMANENT RESIDENTS**

*(TL:VISA-284; 05-17-2001)*

*A lawfully admitted permanent alien returning from a temporary visit abroad is not required to present a passport, unless the alien is applying in a country of which he or she is a national and which requires a passport for departure.*

## **9 FAM 42.2 N4 WAIVER FOR STATELESS PERSONS**

*(TL:VISA-284; 05-17-2001)*

- a. There are several ways an individual might end up truly stateless: the individual may have been born in a disputed territory, such as the Gaza Strip. The individual may have renounced his or her original citizenship or lost such citizenship by operation of law and then failed to acquire citizenship of another country; the laws of the individual's country of birth may not have conferred citizenship on the basis of place of birth and the individual's parents may have been unable to transmit citizenship under the law of their country(ies) of origin, or the individual may have been born in a former colony or territory and may have failed to take necessary steps to retain/acquire the nationality of the former controlling state or to acquire the nationality of the new state. An alien who is a refugee or an exile would normally retain the nationality of the country he or she fled and would not be stateless.*
- b. To determine whether a passport meets the INA passport requirement, post must determine whether the applicant is in fact truly stateless. In general, statelessness is a rare condition, and an alien can usually be presumed to be a national of his or her country of birth, particularly if the alien's parents were also natives of that country. If the applicant claims statelessness, it would be the applicant's burden to establish that he or she did not acquire the nationality of his or her country of birth under the laws of that country and does not have any other nationality. As citizenship is often acquired through parents, post may also examine the nationality of the applicant's parents in those cases where nationality is unclear. If post encounters difficulties in determining either which applicants are stateless, or the nationality of the applicants who are not stateless, post may also wish to consult with country authorities who may have records showing the nationality of its residents.*

## **9 FAM 42.2 N5 WAIVER OF PASSPORT REQUIREMENT FOR NATIONALS OF COMMUNIST-CONTROLLED COUNTRIES**

*(TL:VISA-49; 10-30-1991)*

Under 22 CFR 42.2(e), the passport requirement waiver extends to nationals of Communist or Communist-controlled countries who are unable to obtain a passport. The waiver also extends to an alien abroad who is unwilling to

apply for a passport to the alien's government because of the alien's opposition to communism. In the case of an alien who is applying in the home country, the consular officer must determine prior to visa issuance if the alien will be able to depart upon the issuance of a visa. If not, little positive benefit would be served by receipt of a visa, and the possibility exists that it could be harmful to the alien and/or to the relations between the United States and the host government. If the alien is able to obtain an exit permit or other travel documentation which will allow his legal departure from the country, there would then be no objection based on comity principles to the issuance of a visa.

## **9 FAM 42.2 N6 INTERPRETING TERM "MEMBER OF U.S. ARMED FORCES"**

*(TL:VISA-284; 05-17-2001)*

See 9 FAM 42.1 N3.